

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROXIE BURTON,

Defendant-Appellant.

UNPUBLISHED

February 3, 2004

No. 243874

Saginaw Circuit Court

LC No. 01-020014-FH

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and third-degree fleeing and eluding, MCL 750.479a(3). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that the trial court erred in failing to give a lesser included offense instruction on simple possession of cocaine. Possession is a cognate lesser included offense of delivery. *People v Marji*, 180 Mich App 525, 530; 447 NW2d 835 (1989). MCL 768.32(1) precludes a trial court from instructing a jury on cognate lesser offenses. *People v Cornell*, 466 Mich 335, 355; 646 NW2d 127 (2002). *Cornell* is applicable to defendant’s case, because it raised the issue on appeal after *Cornell* was decided. *Id.*, at 367. Defendant was not charged with a major controlled substance offense, and MCL 768.32(2) is therefore inapplicable. Therefore, the court properly declined to give the requested instruction, which also was not supported by the evidence.

There was sufficient evidence to support defendant’s conviction. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The testimony of the police officers showed that they gave defendant \$40, and he gave them two rocks of crack cocaine. Viewed in a light most favorable to the prosecution, the officers’ testimony established the elements of the crime beyond a reasonable doubt. The

prosecution did not have to produce the \$40 as evidence to prove that defendant received the money in exchange for the drugs.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood